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BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: IRENE E. PETERSBERGER-MOORE, aka IRENE EVELYN PETERSBERGER 8230 Butternut Drive Citrus Heights, California 95621 Pharmacy Technician Registration No. TCH 54654 Respondent.	Case No. 2808 **DEFAULT DECISION AND ORDER** [Gov. Code, §11520]

FINDINGS OF FACT

1. On or about February 22, 2005, Complainant Patricia F. Harris, in her official capacity as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs, filed Accusation No. 2808 against Irene E. Petersberger-Moore, also known as Irene Evelyn Petersberger ("Respondent") before the Board of Pharmacy.

2. On or about January 27, 2004, the Board of Pharmacy ("Board") issued Pharmacy Technician Registration Number TCH 54654 to Respondent. Respondent's Pharmacy Technician Registration was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2005, unless renewed.

3. On or about March 4, 2005, Mary Anne Snyder, an employee of the Office of the Attorney General, served by Certified and First Class Mail a copy of Accusation No. 2808,

Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board, which was and is 8230 Butternut Drive, Citrus Heights, California 95621. A copy of the Accusation and the related documents are attached as exhibit A, and are incorporated herein by reference.

4. Service of the Accusation was effective as a matter of law under the provisions of Government Code section 11505, subdivision (c).

5. Government Code section 11506 states, in pertinent part:

> (c) The respondent shall be entitled to a hearing on the merits if the respondent files a notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

6. Respondent failed to file a Notice of Defense within 15 days after service upon her of the Accusation, and therefore waived her right to a hearing on the merits of Accusation No. 2808.

7. California Government Code section 11520 states, in pertinent part:

> (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence and affidavits may be used as evidence without any notice to respondent.

8. Pursuant to its authority under Government Code section 11520, the Board finds Respondent is in default. The Board will take action without further hearing and, based on Respondent's express admissions by way of default and the evidence before it, contained in exhibit A, finds that the allegations in Accusation No. 2808 are true.

9. The total costs for investigation and enforcement are $5,611.25 as of June 14, 2005.

DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Irene E. Petersberger-Moore, also known as Irene Evelyn Petersberger, has subjected her Pharmacy Technician Registration Number TCH 54654 to discipline.

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2. A copy of the Accusation and the related documents are attached.

3. The agency has jurisdiction to adjudicate this case by default.

4. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician Registration based upon the following violations alleged in the Accusation:

a. Business and Professions Code ("Bus. & Prof. Code") section 4301, subdivision (f) (Acts involving moral turpitude, dishonesty, fraud, deceit, or corruption: Dishonestly or fraudulently appropriating or diverting controlled substances; obtaining controlled substances by fraud, deceit, misrepresentation, or subterfuge, or by the concealment of material facts; and falsely assuming the title of, or representing oneself to be, a registered nurse for the purpose of obtaining controlled substances);

b. Bus. & Prof. Code section 4301, subdivision (g) (False statements in a certificate or other document);

c. Bus. & Prof. Code section 4301, subdivision (j) (Violations of state laws regulating controlled substances including Bus. & Prof. Code section 4060 and Health and Safety Code ("Health & Saf. Code") section 11350, subdivision (a) [possession of controlled substances without lawful prescriptions therefor]; Health & Saf. Code section 11170 [prescribing, administering, or furnishing controlled substances]; Health & Saf. Code section 11173, subdivision (a) [obtaining controlled substances by fraud, deceit, misrepresentation, or subterfuge, or by the concealment of material facts]; and Health & Saf. Code section 11173, subdivision (c) [falsely assuming the title of, or representing oneself to be, a registered nurse for the purpose of obtaining controlled substances]);

d. Bus. & Prof. Code section 4301, subdivision (h) (Self-administration of controlled substances, or use of controlled substances to an extent or in a manner dangerous or injurious to oneself and/or the public).

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ORDER

IT IS SO ORDERED that Pharmacy Technician Registration Number TCH 54654, heretofore issued to Respondent Irene E. Petersberger-Moore, also known as Irene Evelyn Petersberger, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 18, 2005.

It is so ORDERED July 19, 2005

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By

STANLEY W. GOLDENBERG
Board President

Attachments:

Exhibit A: Accusation No.2808 and Related Documents

DOJ docket number:03583110-SA2004103560
Petersberger-Moore, Irene.def.wpd

Exhibit A

Accusation No. 2808 and
Related Documents

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BEFORE THE
BOARD OF PHARMACY
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In the Matter of the Accusation Against: IRENE E. PETERSBERGER-MOORE, aka IRENE EVELYN PETERSBERGER 8230 Butternut Drive Citrus Heights, California 95621 Pharmacy Technician Registration No. TCH 54654 Respondent.	Case No. 2808 **ACCUSATION**

Complainant alleges:

PARTIES

1. Patricia F. Harris ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Board of Pharmacy ("Board"), Department of Consumer Affairs.

2. On or about January 27, 2004, the Board issued Pharmacy Technician Registration Number TCH 54654 to Irene E. Petersberger-Moore, also known as Irene Evelyn Petersberger ("Respondent"). Respondent's pharmacy technician registration will expire on September 30, 2005, unless renewed.

3. On or about December 31, 2003, Respondent submitted an Application for Registration as a Pharmacy Technician to the Board. That same day, Respondent certified under

penalty of perjury to the truth and accuracy of all statements, answers and representations made in the application, and acknowledged that falsification of the information on the form may constitute grounds for denial or revocation of the license.

STATUTORY PROVISIONS

4. Business and Professions Code ("Bus. & Prof. Code") section 4202, subdivision (d), states that the Board may suspend or revoke a registration issued pursuant to this section on any ground specified in Section 4301.

5. Bus. & Prof. Code section 4300 states, in pertinent part:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper . . .

6. Bus. & Prof. Code section 4301 states, in pertinent part:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

. . . .

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this

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chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

. . . .

(j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs . . .

7. Bus. & Prof. Code section 4022 states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a --------," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

8. Bus. & Prof. Code section 4060 states, in pertinent part, that no person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, podiatrist, optometrist, or veterinarian.

9. Health and Safety Code ("Health & Saf. Code") section 11170 states that no person shall prescribe, administer, or furnish a controlled substance for himself.

10. Health & Saf. Code section 11173 states, in pertinent part:

(a) No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

. . . .

(c) No person shall, for the purpose of obtaining controlled substances, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, registered nurse, physician's assistant, or other authorized person . . .

11. Health & Saf. Code section 11350, subdivision (a), states:

Except as otherwise provided in this division, every person who possesses (1) any controlled substance specified in subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of

subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison.

Cost Recovery

12. Bus. & Prof. Code section 125.3 states, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

CONTROLLED SUBSTANCES/DANGEROUS DRUGS AT ISSUE

13. "Norco/Vicodin", a combination drug containing hydrocodone 5 mg and APAP 500 mg, is a Schedule III controlled substance as designated by Health & Saf. Code section 11056, subdivision (e)(4), and is a dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

14. "Xanax", a brand name for alprazolam, is a Schedule IV controlled substance as designated by Health & Saf. Code section 11057, subdivision (d)(1), and a dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

15. "Clonazepam" is a Schedule IV controlled substance as designated by Health & Saf. Code section 11057, subdivision (d)(7), and a dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

16. "Ambien," a brand name for zolpidem tartrate, is a Schedule IV controlled substance as designated by Health & Saf. Code section 11057, subdivision (d)(32), and a dangerous drug within the meaning of Bus. & Prof. Code section 4022 in that it is available by prescription only.

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FIRST CAUSE FOR DISCIPLINE

(Acts Involving Moral Turpitude, Dishonesty, Fraud, Deceit, or Corruption)

17. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (f), on the grounds of unprofessional conduct, in that in and between September 2000, and February 2004, she committed acts involving moral turpitude, dishonesty, fraud, deceit, or corruption as follows:

a. In and between September 2000, and July 2002, while employed at Rite Aid Pharmacy located at 1166 East Draper Parkway, Draper, Utah, Respondent dishonestly or fraudulently appropriated or diverted unknown quantities of the controlled substances hydrocodone, Xanax, clonazepam, and Ambien from the pharmacy, for her own personal use.

b. In and between October 2002, and April 2003, while employed at Rite Aid Pharmacy located at 57th Avenue and Folsom Boulevard, Sacramento, California, Respondent dishonestly or fraudulently appropriated or diverted unknown quantities of the controlled substances hydrocodone, Xanax, clonazepam, and Ambien from the pharmacy, for her own personal use.

c. In and between October 2003, and February 2004, while employed at American Diversified Pharmacy (hereinafter "ADP") located at 3920 Lenane Drive, in Sacramento, Respondent obtained unknown quantities of the controlled substances hydrocodone, Xanax, clonazepam, and/or Ambien by fraud, deceit, misrepresentation, or subterfuge, or by the concealment of material facts. Respondent stole prescriptions that had been written for various patients[1] and took them to several different retail pharmacies in the Sacramento area to have them filled. Further, Respondent misrepresented to pharmacy staff that she was the patient identified on the prescription or the patient's caretaker.

d. In and between October 2003, and February 2004, while employed at ADP, Respondent falsely assumed the title of, or represented herself to be, a registered nurse for

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1. The prescriptions had been mailed to ADP by various patients and physicians. Respondent stole the prescriptions before they were entered into ADP's computer system.

the purpose of obtaining controlled substances including, but not limited to, hydrocodone, Xanax, clonazepam, and Ambien.

SECOND CAUSE FOR DISCIPLINE

(False Statements in a Certificate or Other Document)

18. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (g), on the grounds of unprofessional conduct, in that she knowingly made or signed certificates or other documents that falsely represented the existence or nonexistence of a state of facts, as follows:

a. On or about June 14, 2003, Respondent represented on an employment application for a pharmacy technician position at Longs Drug Stores that she was licensed as a pharmacy technician in the state of Utah, and that the expiration date on her license was "6/04". In fact, Respondent's Utah pharmacy technician license had been expired since May 31, 1999.

b. On or about December 31, 2003, Respondent certified in her response to question 3 on her application for registration as a pharmacy technician that she had not been engaged in the past two years in the illegal use of controlled substances. In fact, in and between October 2002, and December 2003, Respondent self-administered unknown quantities of the controlled substances hydrocodone, Xanax, clonazepam, and/or Ambien, in violation of Bus. & Prof. Code section 4301, subdivision (h), as set forth in paragraph 20 below.

c. On or about December 31, 2003, Respondent certified in her response to question 7 on her application for registration as a pharmacy technician that she had never been convicted of or pled no contest to a violation of any law of a foreign country, the United States or any state laws or local ordinances. In fact, on or about March 11, 1993, in the criminal proceeding titled *People v. Irene Evelyn Petersberger*, District Court of the Fourth Judicial District, Ada County, State of Idaho, Case No. M9301312, Respondent was convicted on her plea of guilty to S 18-903-A (battery, a misdemeanor), and S 18-7001 (vandalism, a misdemeanor).

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THIRD CAUSE FOR DISCIPLINE

(Violations of State Laws Regulating Controlled Substances)

19. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (j), on the grounds of unprofessional conduct, in that in and between October 2002, and February 2004, Respondent violated the following state laws regulating controlled substances:

a. In and between October 2002, and February 2004, Respondent possessed unknown quantities of the controlled substances hydrocodone, Xanax, clonazepam, and/or Ambien without lawful prescriptions for the medications from a physician, dentist, podiatrist, optometrist, or veterinarian, in violation of Bus. & Prof. Code section 4060 and Health & Saf. Code section 11350, subdivision (a).

b. In and between October 2003, and February 2004, while employed at ADP, Respondent prescribed, administered, or furnished the controlled substances hydrocodone, Xanax, clonazepam, and/or Ambien for herself, as set forth in paragraph 17 above, in violation of Health & Saf. Code section 11170.

c. In and between October 2003, and February 2004, while employed at ADP, Respondent obtained unknown quantities of the controlled substances hydrocodone, Xanax, clonazepam, and/or Ambien by fraud, deceit, misrepresentation, or subterfuge, or by the concealment of material facts, as set forth in paragraph 17 above, in violation of Health & Saf. Code section 11173, subdivision (a).

d. In and between October 2003, and February 2004, while employed at ADP, Respondent falsely assumed the title of, or represented herself to be, a registered nurse for the purpose of obtaining controlled substances including, but not limited to, hydrocodone, Xanax, clonazepam, and Ambien, as set forth in paragraph 17 above, in violation of Health & Saf. Code section 11173, subdivision (c).

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FOURTH CAUSE FOR DISCIPLINE

(Self-Administration of Controlled Substances)

20. Respondent is subject to disciplinary action pursuant to Bus. & Prof. Code section 4301, subdivision (h), on the grounds of unprofessional conduct, in that in and between October 2002, and February 2004, Respondent self-administered unknown quantities of hydrocodone, Xanax, clonazepam, and/or Ambien, controlled substances, or used said controlled substances to an extent or in a manner dangerous or injurious to herself and/or the public.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacy Technician Registration Number TCH 54654, issued to Irene E. Petersberger-Moore, also known as Irene Evelyn Petersberger;

2. Ordering Irene E. Petersberger-Moore, also known as Irene Evelyn Petersberger, to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 2/22/05

P. F. Harris

PATRICIA F. HARRIS
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

03583110-SA2004103560
Petersberger-Moore, Irene E.acc.wpd
phd; 01/11/2005